

***IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES***

Applicant: CHEN et al.
Title: VIRTUAL SHARED
DATABASES
Appl. No.: 09/819,358
Filing Date: 3/28/2001
Examiner: LEROUX, Etienne Pierre
Art Unit: 2161
Confirmation Number: 3309

REPLY BRIEF ON APPEAL

Mail Stop Appeal Brief - Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

Under the provisions of 37 C.F.R § 41.39, this Reply Brief is submitted in response to the Examiner's Answer, dated June 1, 2009.

I. Introduction

Pursuant to the right under 37 C.F.R § 41.39, Appellant takes this opportunity to respond to certain comments set forth in the Examiner's Answer.

II. Argument

Several points raised in the recently issued Examiner's Answer bear further comment.

In response to arguments presented in Appellant's primary brief, the Examiner merely repeats his earlier argument that "KSR forecloses the argument that a specific teaching, suggestion or motivation is required to support a finding of obviousness." Examiner's Answer dated July 2, 2009, page 11. As noted in Appellant's primary brief, in accordance with *KSR*, rejections on obviousness grounds cannot be sustained by mere conclusory statements, as rejected by the Examiner in the present case. Instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness. See Appellant's Primary Brief, pages 13-14. The Examiner fails to provide any such rational underpinning.

Further, the Examiner now argues, for the first time, that "Examiner interprets 'unique identifier for an individual' as the credit card number of the donator's credit card" in Ziarno. Examiner's Answer dated July 2, 2009, page 12. According to this interpretation, the Examiner argues that it would be obvious "that the credit card number is common across donation kettles" Appellant respectfully notes that, if this interpretation is accepted, Ziarno fails to teach or suggest any "linking table which includes a compilation of the unique identifiers ... in the one or more virtual data islands," as recited in the pending claims. Specifically, there is no teaching or suggestion in Ziarno that the credit card numbers are compiled in any linking table.

Further, under the heading "Response No. 4," the Examiner argues that "[o]ne of ordinary skill in the art would conclude that Ziarno teaches 'the unique identifier for an individual being common across the virtual data island' because Ziarno does not teach away from the above limitation (MPEP 2141.02)." Appellant respectfully disagrees with the Examiner's interpretation of both Ziarno (as discussed above) and the cited section of the MPEP.

There is no support in the MPEP or any other authority of the proposition that a reference may be interpreted as teaching a feature if it does not teach away from that feature. Certainly, the cited portion of the MPEP (§ 2142.02) offers no support. Further, Appellant has made no argument that Ziarno teaches away from any feature. Rather, as argued above, Appellant notes that Ziarno fails to teach the feature recited in the pending claims.

Accordingly, reconsideration and reversal of the rejection of the claims is once again respectfully requested.

Respectfully submitted,

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By /Sanjeev K. Dhand/

FOLEY & LARDNER LLP
Customer Number: 30542
Telephone: (858) 847-6860
Facsimile: (858) 792-6773

Sanjeev K. Dhand.
Attorney for Applicant
Registration No. 51,182